

# United States Court of Appeals for the Fifth Circuit

United States Courts  
Southern District of Texas  
FILED  
*April 13, 2021*

Nathan Ochsner, Clerk of Court

BRADLEY GARRETT,

No. 21-20018



A True Copy  
Certified order issued Apr 13, 2021

*Tyke W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:17-CV-3363

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Before STEWART, CLEMENT, and GRAVES, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

In this habeas corpus case filed by a state prisoner, the final judgment was entered and certificate of appealability was denied on November 29,

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2018. Therefore, the final day for filing a timely notice of appeal was Wednesday, January 2, 2019 because the thirtieth day was a Saturday, followed by Sunday and two federal holidays. *See FED. R. APP. P. 26(a)(1)(C)*. The petitioner's pro se notice of appeal is dated December 22, 2020 and stamped as filed on January 4, 2021. Because the notice of appeal is dated December 22, 2020, it could not have been deposited in the prison's mail system within the prescribed time. *See FED. R. APP. P. 4(c)(1)* (prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988). Accordingly, the appeal is DISMISSED for want of jurisdiction.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

**LYLE W. CAYCE**  
**CLERK**

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

April 13, 2021

Mr. Nathan Ochsner  
Southern District of Texas, Houston  
United States District Court  
515 Rusk Street  
Room 5300  
Houston, TX 77002

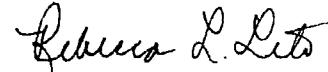
No. 21-20018      Garrett v. Lumpkin  
                          USDC No. 4:17-CV-3363

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Rebecca L. Leto, Deputy Clerk  
504-310-7703

cc: Mr. Bradley Garrett  
Mr. Edward Larry Marshall